

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

| | | |
|--------------------------------|---|------------------------|
| MILLERCOORS, LLC, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | Case No. 19-cv-218-WMC |
| |) | |
| ANHEUSER-BUSCH COMPANIES, LLC, |) | |
| |) | |
| Defendant. |) | |

**ANHEUSER-BUSCH COMPANIES, LLC'S PROPOSED FINDINGS OF FACT
IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**

Anheuser-Busch Companies, LLC ("AB") submits the following Proposed Findings of Fact in support of its Motion for Summary Judgment.

I. The Parties' Beers and Ingredients

A. AB's Bud Light Beer

1. Bud Light is not brewed with corn syrup. ECF 164-24, D. Taylor Dec., ¶¶ 11, 35.
2. Bud Light is brewed with rice. ECF 164-24, ¶ 13.
3. Bud Light does not contain corn syrup. ECF 164-24, ¶¶ 11, 35.
4. Corn syrup is not an ingredient in Bud Light. ECF 164-24, ¶ 11.
5. Brewing with rice is more time consuming than brewing with corn syrup because corn syrup skips multiple steps in the brewing process. ECF 164-24, ¶¶ 34–44.

6. It is more costly to brew beer with rice than with corn syrup. ECF 164-24, ¶¶ 35, 61(a); [REDACTED]

[REDACTED]

7. AB uses corn syrup as part of the brewing process for its value brands Natural Light and Busch Light. ECF 116, Goeler Depo., 142:4–11.

B. Corn Syrup is an Ingredient in Miller Lite and Coors Light

8. Miller Lite is brewed with corn syrup. ECF 158, Manuele Depo., 58:24–59:19.

9. [REDACTED]

10. [REDACTED]

11. Corn syrup is an ingredient in Miller Lite. ECF 158, [REDACTED]
53:12–54:11; [REDACTED].

12. Coors Light is brewed with corn syrup. ECF 158, [REDACTED]; 58:24–59:19.

13. [REDACTED]

14. [REDACTED].

15. [REDACTED]

[REDACTED]

16. [REDACTED]

17. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

18. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

19. Prior to and including the date of Super Bowl LIII (Feb. 3, 2019), MillerCoors's website identified corn syrup as an "ingredient" in Miller Lite beer. ECF 40-1; ECF 40-3; ECF 40-4.

20. Prior to and including Super Bowl LIII (Feb. 3, 2019), MillerCoors's website identified corn syrup as an "ingredient" in Coors Light beer. ECF 40-2; ECF 40-3; ECF 40-5.

21. Corn syrup has been listed as an "ingredient" in Miller Lite and Coors Light since 2014. [REDACTED]; ECF 40-1; ECF 40-2.

22. [REDACTED]
[REDACTED].

23. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

24. When MillerCoors stated on its website that corn syrup was an "ingredient" in Miller Lite, MillerCoors intended to communicate to consumers "what [its] products contain" and "what's in them." ECF 160, 140:13–20.

25. Prior to and including Super Bowl LIII (Feb. 3, 2019), MillerCoors did not include any disclaimers or other clarifications on its ingredients list informing consumers that corn syrup was merely a brewing adjunct, fermentation aid, or otherwise stating that there was no corn syrup in the final Miller Lite product. ECF 40-1; ECF 40-3; ECF 40-4.

26. Prior to and including Super Bowl LIII, MillerCoors did not include any disclaimers or other clarifications on its ingredients list informing consumers that corn syrup was merely a

brewing adjunct, fermentation aid, or otherwise stating that there was no corn syrup in the final Coors Light product. ECF 40-2; ECF 40-3; ECF 40-5.

II. AB's Transparency Campaign

A. Consumers Desire Transparency in Ingredients

27. [REDACTED]

[REDACTED]

[REDACTED]

28. In recent years, AB began to observe a trend that consumers were very interested in knowing the ingredients that go into products and in ingredient transparency and openness. ECF 116, 64:20–65:13; ECF 31.

29. [REDACTED]

[REDACTED]

30. Because the beer industry does not require ingredient disclosure, many consumers were unaware of ingredients. ECF 116, 68:7–16.

31. In deciding to prominently list ingredients in Bud Light advertisements and packaging, AB aimed to start a conversation about beer ingredients that would promote consumer education and help get consumers to search for and look into beer ingredients. ECF 116, 68:7–16, 89:22–24, 90:18–20.

32. Advertising that Bud Light is made with high-quality, natural, agricultural ingredients was a way to inform consumers that Bud Light was not a low-quality beer. ECF 116, 66:21–24; 67:6–12.

B. AB's Advertising Responded to MillerCoors's Advertising of Corn Syrup Attributes

33. At all relevant times, Miller Lite has advertised that it has "more taste" and fewer carbohydrates and fewer calories than Bud Light does. ECF 116, 50:9–10.

34. Coors Light advertises that it is cold and "refreshing." ECF 116, 50:10–11.

35. [REDACTED]

36. [REDACTED]

37. [REDACTED]

38. [REDACTED]

39. [REDACTED]

40. Bud Light's point of difference is that it is brewed with different ingredients. ECF 116, 50:11–12.

41. The goal of AB's transparency campaign was to allow consumers to make a choice on those three light beers based on an ingredient conversation. ECF 116, 50:13–16.

42. AB avoided disparaging corn syrup in the transparency campaign. ECF 141-4 (Nov. 30, 2018, email from Goeler to members of the Bud Light team saying that the best quote to come out of a meeting with its advertising agencies was, "This is not about Corn Syrup being bad, that's for the consumer to decide. This is about transparency.").

43. AB's Bud Light ads at issue in this lawsuit do not reference "high fructose corn syrup" or "HFCS." ECF 116, 90:6-7; [REDACTED]

44. The different forms of advertising within the transparency campaign had different roles and different functions. ECF 116, 97:6-9; 98:13.

45. Although the overarching creative direction was transparency and ingredients, the individual advertisements and packaging at issue do not communicate the same message. ECF 116, 98:2-3; *compare, e.g.*, ECF 14-20 (billboards and print advertisement); ECF 40-31 through 40-37 (transcripts of Bud Light commercials); ECF 60, ¶¶ 4-23 (packaging).

C. Bud Light's Television Commercials at Issue

i. Special Delivery

46. *Special Delivery*, which first aired during Super Bowl LIII, takes place in a mythical medieval Bud Light Kingdom where Bud Light is brewed. ECF 40-32.

47. *Special Delivery* opens with the Bud Light King stating, "And that's how you brew it." ECF 40-32, p. 4.

48. In *Special Delivery*, the Bud Light King states, "We don't brew Bud Light with corn syrup." ECF 40-32, p. 4.

49. In *Special Delivery*, a member of the King's court says, "Miller Lite uses corn syrup." ECF 40-32, p. 4.

50. *Special Delivery* cites to the millercoors.com website. Harrison Dec., Ex. 4, p. 10.

51. In *Special Delivery*, the King says, "Oh brewers of Miller Lite, we received your corn syrup by mistake." ECF 40-32, p. 4.

52. In *Special Delivery*, a member of the Miller Lite kingdom says, "That's not our corn syrup. We received our shipment this morning." ECF 40-32, p. 4.

53. The member goes on to say, “Try the Coors Light castle. They also use corn syrup.” ECF 40-32, p. 4.

54. In *Special Delivery*, the King says, “Oh brewers of Coors Light, is this corn syrup yours?” ECF 40-32, p. 4.

55. In *Special Delivery*, a member of the Coors Light kingdom says, “Looks like the corn syrup has come home to be brewed. To be clear, we brew Coors Light with corn syrup.” ECF 40-32, pp. 4–5.

56. The closing scene of *Special Delivery* includes a voice over which says, “Bud Light, brewed with no corn syrup.” ECF 40-32, p. 5.

57. *Special Delivery* does not reference “high fructose corn syrup” or “HFCS.” ECF 40-32.

58. MillerCoors publicly described the *Special Delivery* advertisement as “going to great lengths to explain that Miller Lite is brewed with ‘corn syrup,’ while Bud Light is not.” ECF 40-8.

ii. Mountain Folk

59. In *Mountain Folk*, which first aired after Super Bowl LIII, Mountain Man 1 says, “Coors Light is made with barley, water, hop extract, and corn syrup.” ECF 40-36, p. 4.

60. In *Mountain Folk*, Mountain Man 2 says, “Miller Lite is made with barley, water, hops, hop extract, and corn syrup.” ECF 40-36, p. 4.

61. *Mountain Folk* cites to the millercoors.com website. Harrison Dec., Ex. 4, p. 2.

62. In *Mountain Folk*, Mountain Man 3 says, “Bud Light is made with barley, rice, water, hops, and no corn syrup.” ECF 40-36, p. 4.

63. *Mountain Folk* does not reference “high fructose corn syrup” or “HFCS.” ECF 40-36.

iii. Other Commercials

64. [REDACTED]

[REDACTED]

65. No commercial makes reference to “high fructose corn syrup.” ECF 40-33 (*Medieval Barbers*), 40-34 (*Trojan Horse*), 40-35 (*Cave Explorers*), 40-37 (*Thespians*), 40-38 (*No Miller Lite Ingredients Label*).

66. No commercial says that corn syrup is contained in the final product of Miller Lite or Coors Light. ECF 40-33 (*Medieval Barbers*), 40-34 (*Trojan Horse*), 40-35 (*Cave Explorers*), 40-37 (*Thespians*), 40-38 (*No Miller Lite Ingredients Label*).

D. Bud Light Secondary Packaging

67. Bud Light’s secondary packaging was designed to highlight what AB views as the quality of what is in Bud Light. ECF 116, 97:21–22.

68. [REDACTED]

[REDACTED]

69. Bud Light’s secondary packaging accurately lists Bud Light’s four ingredients used in brewing Bud Light beer: hops, barley, water, and rice. [REDACTED] ECF 14-19; ECF 164-24, ¶ 7.

70. [REDACTED]

[REDACTED]

71. Bud Light (including its Bud Light Lime and Orange formulations) competes with many beers and beverages other than Miller Lite and Coors Light; [REDACTED]

[REDACTED]; ECF 116, 170:25–173:1.

72. [REDACTED]

73. [REDACTED]

74. The Bud Light packaging does not make any claims about high-fructose corn syrup. ECF 14-19; ECF 60, ¶¶ 4–23.

75. AB did not consider its Bud Light secondary packaging to be a part of or directly related to the television advertisements, such as *Special Delivery*. ECF 116, 97:3–22.

76. The Bud Light secondary packaging does not refer to the Bud Light King or the Bud Light Knight, or the medieval kingdom depicted in the accused television advertisements. ECF 14-19.

E. Bud Light Point of Sale/Billboards

77. [REDACTED]

78. [REDACTED]

79. [REDACTED]

80. [REDACTED]

81. No Bud Light billboard makes reference to “high fructose corn syrup” or “HFCS.” ECF 86, ¶ 81.

82. [REDACTED]

83. No Bud Light billboard makes reference to corn syrup being “in” Miller Lite or Coors Light. ECF 86, ¶ 81.

III. Corn Syrup is in the Final Products of Miller Lite and Coors Light

A. MillerCoors Claims Corn Syrup Fully Ferments and Therefore is Not in the Final Beer Product of Miller Lite and Coors Light

84. Since the night of Super Bowl LIII, MillerCoors repeatedly has stated publicly that no corn syrup is in the Miller Lite or Coors Light finished products. *See, e.g.*, ECF 86, ¶ 11; ECF 40-8; ECF 40-28; Harrison Dec., Ex. 6.

85. When MillerCoors publicly stated that there is no corn syrup in either Miller Lite or Coors Light, it was telling consumers that the corn syrup sugars are fully fermented in the brewing process. ECF 160, 98:12–17.

86. When MillerCoors publicly stated that no corn syrup is present in either Miller Lite or Coors Light, it was communicating that there are no corn syrup sugars left in the beer. ECF 160, 84:7–14; 81:8–16; 111:10–15.

87. [REDACTED]

88. On October 17, 2019, Adam Collins, MillerCoors's Vice President of Communication, publicly issued the following statement on behalf of MillerCoors: "Corn syrup is a brewing adjunct, serving the same basic function to feed yeast as rice does in Bud Light. ... It is consumed during the brewing process and corn syrup is not in the final beer." Harrison Dec., Ex. 7.

89. Part of MillerCoors's corporate response to the Bud Light Super Bowl ads was to say that corn syrup is fully fermented in the brewing process and that there are no corn syrup sugars in the Miller Lite or Coors Light finished product. ECF 160, 184:10–14.

90. [REDACTED]

91. [REDACTED]

92. [REDACTED]

B. [REDACTED]

93. [REDACTED]

[REDACTED]

94. On February 4, 2019, Mr. Frost posted an article on “Behind the Beer” blog stating, “... dextrose is widely used across the beer industry by brewers large and small in large part because it cleanly and efficiently converts to alcohol during fermentation and has a neutral taste. In short, during the fermentation process, yeast eats these simple sugars and converts them to alcohol and carbon dioxide. ... both Miller Lite and Coors Light use corn-derived sugars during fermentation, which aids in making them light-bodied, easy-drinking beers with reduced calories and carbohydrates. None of these sugars are in the final product.” ECF 40-28, p. 1.

95. [REDACTED]

96. Peter J. Coors is the Senior Director of Quality for MillerCoors, a Molson Coors Director, and the son of Pete Coors. ECF 158, 12:19–21, 12:25–13:9.

97. Peter J. Coors is knowledgeable about the brewing process. ECF 158, 12:22–24; see also [REDACTED]

98. [REDACTED]

[REDACTED]

[REDACTED]

99. [REDACTED]

[REDACTED]

100. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

101. On February 22, 2019, MillerCoors published an advertising article on its “Behind the Beer” blog that stated: “(Corn-derived sugars like corn syrup ... cleanly and efficiently convert to alcohol during fermentation and have a neutral taste. They do not end up in the final product.)” Harrison Dec., Ex. 8, p. 1.

102. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

103. [REDACTED]

[REDACTED]

104. Mr. DeCou is an experienced brewmaster who is knowledgeable about MillerCoors’s beers. ECF 158, 11:17–12:2; see also [REDACTED]

[REDACTED]

[REDACTED]

105. [REDACTED]

[REDACTED]

106. [REDACTED]

[REDACTED]

C. [REDACTED]

107. [REDACTED]

[REDACTED]

108. [REDACTED]

[REDACTED]

109. [REDACTED]

[REDACTED]

110. [REDACTED]

[REDACTED]

111. [REDACTED]

[REDACTED]

[REDACTED]

112. [REDACTED]

[REDACTED]

[REDACTED]

i. [REDACTED]

113. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

114. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

115. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

116. [REDACTED]
[REDACTED]

117. [REDACTED]
[REDACTED]
[REDACTED]

118. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

119. [REDACTED]

120. [REDACTED]

121. [REDACTED]

122. [REDACTED]

123. [REDACTED]

124. Both Miller Lite and Coors Light have residual sugars in the final product [REDACTED]

[REDACTED] ECF 159, 35:10–13, [REDACTED], [REDACTED], [REDACTED], [REDACTED]

125. MillerCoors's own experts [REDACTED] admit the sugars that are present in the Miller Lite and Coors Light final products come from two sources—they come from the corn syrup

and they come from the malted barley used in the brewing process. ECF 159, 90:18–21; [REDACTED]

[REDACTED]

126. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

127. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

128. [REDACTED]

[REDACTED]

129. [REDACTED]

[REDACTED]

ii. [REDACTED]

130. [REDACTED]

[REDACTED].

iii. [REDACTED]

131. [REDACTED]

[REDACTED]

132. The non-sugars in corn syrup are not fermentable. ECF 159, 79:19–80:14; [REDACTED]

133. The non-sugars in corn syrup make their way into the Miller Lite and Coors Light final products. ECF 159, 79:19–80:14; [REDACTED].

134. [REDACTED]

135. [REDACTED]

D. AB Testing Confirms Corn Syrup is in the Final Products of Miller Lite and Coors Light

136. Because the component parts of corn syrup are in each of the final Miller Lite and Coors Light products, the source of which is corn syrup, corn syrup exists in each of the final Miller Lite and Coors Light products. ECF 164-25, ¶ 61.

137. It is possible to identify whether sugars from the corn syrup used by MillerCoors to brew Miller Lite and Coors Light are present in the final beer products by conducting carbon isotope testing. ECF 164-25, ¶ 52.

138. This isotope testing demonstrated that corn syrup sugars are in the final products of Miller Lite and Coors Light. ECF 164-25, ¶ 56; Harrison Dec., Ex. 16.

IV. MillerCoors Has Failed to Establish an Injury from AB's Advertisements or Packaging

139. [REDACTED]

140. [REDACTED]

[REDACTED]

[REDACTED]

141. MillerCoors's Vice President of Communications, Adam Collins, published a tweet after Super Bowl LIII that Bud Light sales were down and Miller Lite sales were up. ECF 160, 253:25–254:6, Harrison Dec., Ex. 17.

142. After Super Bowl LIII, Miller Lite was up in sales dollars and sales volume and share gains among mainstream beers in every channel. ECF 160, 254:3–24.

143. [REDACTED]

[REDACTED]

144. MillerCoors publicly stated in a tweet on May 8, 2019 “[s]ales are up. And summer is coming. See why Miller Lite is outpacing its segment and the beer industry as a whole.” Harrison Dec., Ex. 18; ECF117, 223:6–17; ECF 160, 249:22–250:3.

145. MillerCoors's May 8, 2019 tweet was an accurate statement of the situation for Miller Lite at that time. ECF 160, 249:22–250:10.

146. Molson Coors's president and CEO Mark Hunter publicly stated in a press release dated July 31, 2019 that MillerCoors had a “solid start” for the first four months of the year.

[REDACTED] Harrison Dec., Ex. 19, p. 2.

147. Mr. Hunter publicly stated in a press release dated July 31, 2019 that the months of May and June 2019 were challenging due to unfavorable weather and weak industry demands. Harrison Dec., Ex. 19, p. 2; [REDACTED]

148. [REDACTED]

[REDACTED]

149. In a March 8, 2019 “Behind the Beer” blog post, Miller Lite reported that it was on a 17-quarter run of share gains in the American light lager segment and that it continues to gather momentum heading into spring. ECF 40-16, p. 1; [REDACTED]

150. The March 8, 2019 “Behind the Beer” blog post states that Miller Lite posted share gains among mainstream beers, was up 1.2% in sales dollars, and was picking up share not only in its segment but across the entire beer category. ECF 40-16; [REDACTED]

151. Anup Shah, Vice President of the Miller Family of Brands, reported in the March 8, 2019 “Behind the Beer” blog post that AB’s advertisements were not effective in knocking Miller Lite off its path. ECF 40-16, p. 2; [REDACTED]

152. In a March 11, 2019 “Behind the Beer” blog post, MillerCoors reported that as of that date, Coors Light and Miller Lite had each held their share trends. Harrison Dec., Ex. 20; [REDACTED].

153. In the March 11, 2019 “Behind the Beer” blog post, MillerCoors stated that Miller Lite continues to pick up share in total beer and has gained a full share point in premium light segment year to date. Harrison Dec., Ex. 20, p. 2; [REDACTED]; ECF 160, 253:11–19.

154. In the March 11, 2019 “Behind the Beer” blog post, MillerCoors stated that Coors Light has held share in premium light beers. Harrison Dec., Ex. 20, p. 2; [REDACTED] ECF 160, 253:11–19.

155. In the March 11, 2019 “Behind the Beer” blog post, MillerCoors stated that Bud Light’s sales plummeted post #corntrouvery and that the brand share of Bud Light went down. Harrison Dec., Ex. 20, p. 1; ECF 160, 253:1–19.

156. As of September 23, 2019, Coors Light and Miller Lite had seen share gains in the wake of Bud Light's Super Bowl commercials and other advertising by Bud Light about ingredients. ECF 160, 143:10–144:1.

157. As of September 2019, Miller Lite was up 1.1 points share, Coors Light was up 0.3 points share, and Bud Light was down 1.2 points share. ECF 160, 144:2–10, 144:14–145:3.

158. A September 24, 2019 *Beer Business Daily* publication highlighted that Miller Lite was up 1.1 points share, Coors Light was up 0.3 share, and Bud Light was down 1.2 since AB's Super Bowl commercial ran. ECF 160, 257:4–15.

159. The September 24, 2019 *Beer Business Daily* publication stated that Coors Light has seen improvements since Bud Light's Super Bowl commercials, with sales volume percent moving from minus 3.4 percent in the latest 13 weeks to minus 3 percent in the last four weeks, and only down 1.8 percent in the last week. ECF 160, 257:4–22.

160. [REDACTED]

161. [REDACTED]

162. [REDACTED]

163. [REDACTED]

164. [REDACTED]

165. [REDACTED]

166. [REDACTED]

167. Any sales changes in Miller Lite, Coors Light and Bud Light since Super Bowl LIII could be caused by factors other than AB's advertisements. ECF 160, 259:2-7.

168. MillerCoors thanked AB for running *Special Delivery* and the related ads during Super Bowl LIII, describing them as a "gift." ECF 32-1; ECF 40-14.

169. [REDACTED]

170. [REDACTED]

171. [REDACTED]

172. [REDACTED]

173. [REDACTED]

V. MillerCoors's Unclean Hands

A. [REDACTED]

174. [REDACTED]
[REDACTED]

175. [REDACTED]
[REDACTED]

176. [REDACTED]
[REDACTED]

177. [REDACTED]
[REDACTED]

178. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

179. [REDACTED]
[REDACTED]

180. [REDACTED]
[REDACTED]
[REDACTED]

181. [REDACTED]
[REDACTED]

182. [REDACTED] Pete Marino, MillerCoors's Chief Public Affairs and
Communications Officer. ECF 160, [REDACTED] 7:16–18.

183. [REDACTED]

B. [REDACTED]

184. On February 6, 2019, Mr. Marino published a tweet stating that the Bud Light King John Barley IV (and therefore Bud Light) was “devious” because Bud Light used corn syrup in Bud Light Lime and Orange. Harrison Dec., Ex. 21.

185. [REDACTED]

186. [REDACTED]

187. [REDACTED]

188. [REDACTED]

189. [REDACTED]

190. MillerCoors’s Code of Conduct states with regard to the use of social media, “BE ACCURATE. Use good judgment and strive for accuracy. Cite sources when possible and correct errors ASAP by posting a retraction.” ECF 164-15, p. 23.

191. [REDACTED]

C. [REDACTED]

192. MillerCoors advertises that “not a single product here at MillerCoors ever uses high fructose corn syrup, while a number of Anheuser-Busch products do.” ECF 119-2, at AB-MC 668.

193. This statement was published during the Super Bowl and was repeated in the *Wall Street Journal*. Harrison Dec., Exs. 22–23.

194. [REDACTED]
[REDACTED]

195. Arnold Palmer Spiked Half & Half is listed on MillerCoors’s “Brand Nutritional Data” webpage. ECF 160, 32:19–21; ECF 40-3, p. 1.

196. The “Ingredients” column for Arnold Palmer Spiked Half & Half on MillerCoors’s “Brand Nutritional Data” webpage is blank. ECF 40-3, p. 1.

197. [REDACTED]
[REDACTED]

D. [REDACTED]

198. On February 8, 2019, Mr. Marino gave an interview with Cheddar, an on-line program, about the Super Bowl. ECF 40-23.

199. In this interview, he stated that Bud Light was “probably” made with rice syrup. ECF 40-23, 3:16–17; ECF 160, 70:1–15.

200. This interview was part of MillerCoors’s corporate strategy to respond to Bud Light’s Super Bowl commercials. ECF 160, 184:6–9.

201. [REDACTED]
[REDACTED]

202. [REDACTED]

203. Mr. Marino has not asked to correct his interview, which is still on-line, and he has no plans to do so. ECF 160, 72:14–20.

204. [REDACTED]

E. [REDACTED]

205. MillerCoors claims today on its website that high fructose corn syrup is something “nutritionists have called Public Health Enemy #1.” ECF 164-16, at MC 25327.

206. MillerCoors’s own retained expert Dr. John White has testified that a claim that high fructose corn syrup is “Public Health Enemy #1” is false and lacks any scientific basis. ECF 159, 16:23–17:2; 134:17–21.

207. MillerCoors does not intend to correct or take down this statement. ECF 160, 45:7–13.

F. MillerCoors’s Continued use of Corn Imagery

208. After the Bud Light Super Bowl advertisements, MillerCoors amended its website to describe its ingredients in a different way than it had before the Super Bowl. Harrison Dec., Ex. 24, MillerCoors’s Response to Interrogatory No. 12.

209. [REDACTED]

210. [REDACTED]

G. MillerCoors's Ingredient Advertising

211. From 2014–2019, MillerCoors advertised on its website that corn syrup was an “ingredient” in Miller Lite and Coors Light. ECF 40-1 through 40-5; [REDACTED].

212. Mr. Marino has admitted that this statement was intended to communicate “what our products contain and what’s in them.” ECF 160, 140:13–20.

213. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

H. [REDACTED]

214. [REDACTED]

[REDACTED].

215. [REDACTED]

[REDACTED]

[REDACTED]

216.

217.

218.

219.

220.

221.

222.

223.

224.

225.

226.

227.

228.

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230.

231. The information included the exact hops blend used; the exact barley blend; the ratio of rice to barley; the respective weights of each ingredient; and the volume of the batch. ECF 164-8, at MC 25397–98.

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238. Mr. Brooks is a former employee of Anheuser-Busch InBev

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VI. Consumer Surveys Regarding Deception

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256.

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258.

259. [REDACTED]

[REDACTED]

260. [REDACTED]

[REDACTED]

[REDACTED]

261. [REDACTED]

[REDACTED]

262. [REDACTED]

[REDACTED]

[REDACTED]

263. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

264. [REDACTED]

[REDACTED]

265. [REDACTED]

[REDACTED]

[REDACTED]

266. [REDACTED]

[REDACTED]

267. [REDACTED]

[REDACTED]

268. [REDACTED]

269. [REDACTED]

270. [REDACTED]

271. [REDACTED]

272. [REDACTED]

273. [REDACTED]

274. [REDACTED]

A. *Mountain Folk Survey*

275. MillerCoors submitted a “Report of Yoram (Jerry) Wind” dated March 27, 2019 that attempted to demonstrate a likelihood of deception caused by AB’s *Mountain Folk* commercial (“*Mountain Folk Survey*”). ECF 15.

276. The *Mountain Folk* Survey included a question about corn syrup, which stated, in part, “Being ‘made with’ corn syrup may mean a number of different things” (QF7b). ECF 15, ¶ 63; ECF 15-8, Appendix H-11.

277. [REDACTED]

278. [REDACTED]

279. [REDACTED]

280. [REDACTED]

281. [REDACTED]

282. The *Mountain Folk* Survey used a control stimulus that included a disclaimer stating, “While corn syrup is used during the brewing of Miller Lite and Coors Light, ***there is NO corn syrup in the Miller Light and Coors Light you drink.***” ECF 15, ¶15 (emphasis in original); Harrison Dec., Ex. 27.

283. Despite seeing this disclaimer, 63.9% of control group respondents chose the response stating that “corn syrup is used only during the brewing process ... but is not in the Miller/Coors you drink” and 23.5% of those control group respondents chose the response stating that “corn syrup is both used during the brewing process ... and is in the Miller/Coors you drink.” ECF 15, ¶ 81, Figure 5; ECF 15-12, Appendix L-2.

284. The *Mountain Folk* Survey included a question about high fructose corn syrup (QF8). ECF 15-8, Appendix H-11.

285. Neither the test group stimulus nor the control group stimulus in the *Mountain Folk* Survey included the phrase “high fructose corn syrup.” ECF 15, ¶¶ 6, 13–16.

286. On behalf of AB, survey expert John Hauser analyzed the *Mountain Folk* Survey, and his opinions were set forth in the “Declaration of John R. Hauser, SC.D.” dated April 28, 2019. ECF 37.

287. Prof. Hauser found that the *Mountain Folk* Survey did not yield reliable results to support Dr. Wind’s opinions; among other criticisms, he found that the survey design was prone to generating demand artifacts throughout, biasing the conclusions in MillerCoors’s favor by providing cues to as to the “correct” answer from MillerCoors’s perspective. ECF 37, ¶ 18.

288. Prof. Hauser found that the *Mountain Folk* Survey lacked proper filter questions, included persistent and unnatural probing, and instructed respondents what to believe. ECF 37, ¶ 18.

289. Prof. Hauser stated that Dr. Wind’s “key measure,” based on the closed-ended question of QF7b regarding “made with corn syrup,” mischaracterized the respondent’s prior answer; suggests to respondents that there may be ambiguity in the meaning of “made with”; improperly provided the respondents with cues to the “correct” response; led respondents to disproportionately select that “correct” response; and merely reflected phrase recognition, not consumer understanding. ECF 37, ¶¶ 18, 21, 30.

290. Prof. Hauser stated that Dr. Wind’s report’s identification of two disclaimers, but reporting data as to only one, as well as references to three videos but data as to only two, indicates the existence of unreported data. ECF 37, ¶¶ 18, 41–42.

291. Prof. Hauser stated that Dr. Wind’s closed-ended question about corn syrup and high fructose corn syrup induced a demand artifact that led some respondents to indicate that the ad “says, suggests, or implies” that corn syrup and high fructose corn syrup are the same. ECF 37, ¶¶ 43, 46.

292. Prior to answering question QF8 in the *Mountain Folk* Survey, only 1.3% of all control group respondents and only 1.4% of test group respondents mentioned the word “fructose” in response to an open-ended question. ECF 37, ¶¶ 43, 46.

293. Prof. Hauser stated that question QF8 in the *Mountain Folk* Survey specifically introduced the idea of a relationship between corn syrup and high fructose corn syrup. ECF 37, ¶ 44.

B. Special Delivery Survey

294. [REDACTED]

295. [REDACTED]

296. [REDACTED]

297. [REDACTED]

298. [REDACTED]

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302.

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304.

305. [REDACTED]

[REDACTED]

[REDACTED]

306. [REDACTED]

[REDACTED]

[REDACTED]

C. AB's Packaging Survey

307. On behalf of AB, survey expert Phil Johnson of JJG Group LLC conducted an online consumer survey titled "A Study of Perceptions of the Bud Light Packaging" ("Packaging Survey"). ECF 168.

308. The survey was conducted between May 30, 2019 and June 3, 2019 and was presented to the court in ECF 65; it has now been formalized and reported in Mr. Johnson's expert report served on October 2, 2019. ECF 168, ¶¶ 8, 11.

309. The Packaging Survey included 625 respondents and used a "test" cell and "control" cell and used two stimuli: (1) a "test package" consisting of front and side panels of the Bud Light 12-pack packaging bearing the "No Corn Syrup" depiction; and (2) a "control package" showing the same packaging, but with the "No Corn Syrup" depiction redacted. ECF 168, ¶¶ 11, 15.

310. 311 respondents saw the test package bearing the "No Corn Syrup" language; 314 respondents saw the control package without the corn syrup language; and no respondent saw both packages. ECF 168, ¶ 17.

311. The Johnson Packaging Survey respondents were screened, and quality control and security measures were used. ECF 168, ¶¶ 18–27.

312. The survey respondents were allowed to view the stimuli for as long as they chose to do so, with a minimum of 10 seconds. ECF 168, ¶ 30.

313. The survey respondents were instructed to look at the stimuli as they would if they were considering buying beer at a liquor store, grocery store, or other retailer that sold beer. ECF 168, ¶ 29.

314. The survey respondents were asked an open-ended question about the “main message” of the stimuli (Q2a). ECF 168, ¶ 32.

315. The survey respondents were asked an open-ended follow-up question about what else the packaging may “say or suggest ...” (Q2b). ECF 168, ¶ 32.

316. The survey respondents were asked an open-ended question about “what brand of beer was in the package you looked at” (Q2c). ECF 168, ¶ 32.

317. The survey respondents were asked a closed-ended question whether the package may “say or suggest something about any other brand or brands of beer” (Q3a). ECF 168, ¶ 33.

318. The survey respondents who answered yes to Q3a about “other brand or brands” were asked an open-ended question requesting them to identify the brand(s) of beer the packaging said something about (Q3b), and they were then asked an open-ended follow-up question asking for “any other” brands (Q3c). ECF 168, ¶ 33.

319. The respondents who identified “other brand(s)” in response to Q3b or Q3c were then asked an open-ended question, “What did the package say or suggest about [those brand(s)]?” (Q3d), and then an open-ended follow-up question, “What else, if anything, did it say or suggest about [those brand(s)]?” (Q3e). ECF 168, ¶ 33.

320. The respondents who chose “no specific brand” in response to Q3b about “other brands” were asked, “What did the package say or suggest about other brands of beer?” (Q3f), and

then an open-ended follow-up question, “What else, if anything, did it say or suggest about other brands of beer?” (Q3g). ECF 168, ¶ 33.

321. The Packaging Survey showed that 64% of test cell respondents and 60% of control cell respondents reported that the main message conveyed by the Bud Light secondary packaging is the ingredients. ECF 168, ¶ 40.

322. No respondents identified Miller Lite or Coors Light in response to the main message questions. ECF 168, ¶ 41.

323. 72% of the test cell respondents and 77% of the control cell respondents said that the packaging did not say or suggest anything about other brands of beer; only 21% of the test cell respondents and 18% of the control cell respondents said that the packaging did say or suggest anything about another brand. ECF 168, ¶ 43.

324. Only one test cell respondent identified Miller Lite or Coors Light and only five control cell respondents (the group who saw the stimulus without “corn syrup” statements) identified Miller Lite or Coors Light, and only two of those control cell respondents took away a message relating to corn syrup and Miller Lite or Coors Light. ECF 168, ¶¶ 46–48.

325. The Packaging Survey showed that the Bud Light secondary packaging at issue primarily conveys a message about what is in Bud Light. ECF 168, ¶¶ 49–50.

326. The Packaging Survey showed that the Bud Light secondary packaging at issue does not convey a significant level of false or misleading information with respect to any other brands of beer, including Miller Lite and Coors Light. ECF 168, ¶ 51.

327. The Packaging Survey showed that the Bud Light secondary packaging at issue is not inherently comparative and does not lead light beer consumers to believe that corn syrup is contained in the final Miller Lite or Coors Light products. ECF 168, ¶¶ 52–53.

328. MillerCoors did not submit a consumer survey using the Bud Light secondary packaging as a stimulus. ECF 149; ECF 168, ¶ 65; ECF 167, 72:11–13.

D. Dr. Wind’s “Materiality” or Preference Survey

329. [REDACTED]

[REDACTED]

[REDACTED]

330. [REDACTED]

[REDACTED]

331. [REDACTED]

[REDACTED]

332. [REDACTED]

[REDACTED]

333. [REDACTED]

334. [REDACTED]

335. [REDACTED]

336. [REDACTED]

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337. [REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

371.

[REDACTED]

[REDACTED]

[REDACTED]

VII. Only Outside Brewing Expert Opines that Corn Syrup is In the Final Products of Miller Lite and Coors Light

372. [REDACTED]

373. [REDACTED]

374. Dr. White, MillerCoors's retained outside expert, testified that he was not an expert in [REDACTED] brewing. ECF 159, 89:24, 173:5-7.

375. The only independent outside expert who is a brewing chemist is Brett Taubman, who opines that corn syrup is in the final products of Miller Lite and Coors Light. ECF 164-25.

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Respectfully submitted,

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